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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,874	08/27/2003	Gunhild Hamer	100718- / Beiersdorf 633.	4886

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EXAMINER

DODSON, SHELLEY A

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/648,874	Applicant(s) HAMER ET AL.	
	Examiner SHELLEY A. DODSON	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on PRELIMINARY AMENDMENT FILED.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 09/622,090.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

SHELLEY A. DODSON
PRIMARY EXAMINER

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>8/2003; 5/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1.

Claims 1 and 3-11 are pending in this application filed August 27, 2003.

Applicant's claims are directed toward cosmetic or dermatological oil/water emulsions with reduced lipid content.

Claim Rejections - 35 USC § 112

2.

Claims 1 and 3-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rejected for being confusing due to the phrase "esterified with four or less fatty acid residues". The phrase is confusing as it does not have a lower limit for the number of fatty acid residues, such that the disaccharide may not actually be esterified at all. Clarification is necessary in the above stated matter.

Claim 10 is rejected for being inconsistent with claim 1 which it ultimately depends. The inconsistency comes from the limitation of "esterified with four or less fatty acid residues" of claim 1 where one to eight of the radical R1-R8 can be alkanoyl groups in claim 10. Again, clarification is requested.

Claim Rejections - 35 USC § 102

3.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4.

Claims 1, 3, 5, 7, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Amalric et al (WO 95/13863 A).

Amalric discloses alkylglycoside-containing concentrates and uses thereof(see abstract). One composition contains octadecyl glucoside, octadecanol, 1 to 5% oil, water and acrysol. Note pages 11 and 13, examples 3 and 5. Acrysol is an acrylate/methacrylate copolymer. The specific oils include glycerol esters of heptanoic acid (See table IV, page 14.) This meets the specific limitation of a glycerol ester of wool wax acids.

5.

Claims 1 and 6 rejected under 35 U.S.C. 102(b) as being anticipated by Hansenne USP No. 5,679,656, as further understood by Brancq et al (WO/92/06778; see also USP No. 5,958,431 for the English equivalent. Hansenne discloses artificial tanning

compositions Examples 1 is comprised of MONTANOV 68, an alkylpolysaccharide/fatty alcohol mixture (see column 5, line 50 through to column 6, line 25.) The composition contains water in phases B and C. The lipid content is 0%. Hansenne describes MONTANOV 68 as a commercially available product whose composition corresponds to the description in Example 1 of Seppic's WO 92/06778. In that specific reference, the reaction product is described as cetylstearyl alcohol (87.2%), cetearyl glucoside (12.2%), and a residual amount of glucose (see Brancq, page 7, lines 29-32). The polycondensates of glucose are apparently removed by filtration, as discussed by Hansenne (column 3, lines 15-16). It is noted that WO 92/06778 is cited merely to identify MONTANOV 68. Additionally, applicant recognizes in the instant specification that MONTANOV 68 is an alkyl glucoside covered by the invention. See specification, page 6, 4th paragraph.

Claim Rejections - 35 USC § 103

6.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7.

Claims 1, 3, and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amalric et al (WO 95/13863 A) in view of Brancq et al USP No. 5,958,431.

Amalric teaches alkylglycoside-containing concentrates and uses thereof (see abstract). One composition contains octadecyl glucoside, octadecanol, 1 to 5% oil, water and acrysol. Note pages 11 and 13, examples 3 and 5. Acrysol is an acrylate/methacrylate copolymer. The specific oils include glycerol esters of heptanoic acid (See table IV, page 14.) This meets the specific limitation of a glycerol ester of wool wax acids. The Amalric reference discloses each and every aspect of the instant invention but lacks cetylstearyl alcohol and sucrose esters.

Brancq teaches fatty alcohol/alkyl polyglucoside compositions as emulsifying agents. The fatty alcohols include cetylstearyl alcohol and cetystearyl glucose (see column 4, lines 34-66). Brancq teaches a cream comprising cetylstearyl alcohol, cetylstearylglucoside, glucose, and water (see column 4, lines 60-

66). A make-up removing emulsion further comprises 5% sweet almond oil (see column 5, lines 66 through column 6, line 12). The reference lacks sucrose esters, glucose esters of wool wax acid, and acrylate/alkyl acrylate copolymers. The emulsifiers of Brancq have the advantage of being self-emulsifiable and do not contain toxic ethylene oxide by products (see column 1, line 55 through to column 2, line 20).

It would have been obvious to one of ordinary skill in the art at the time the invention as made to have modified the compositions of Amalric by including cetylstearyl alcohol/cetylstearyl glucose as taught by Brancq in order to benefit the self-emulsifiable properties of the compositions.

Information Disclosure Statement

8.

The information disclosure statements (IDS) submitted were noted and the submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner has considered the information disclosure statements and made them of record.

Telephone Inquiries

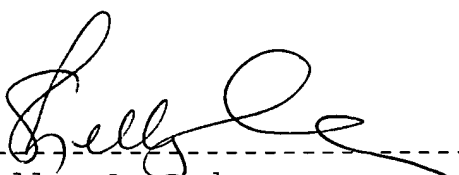
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley A. Dodson whose telephone number is (571) 272-0612 and fax number (571) 273-0612. The examiner can normally be reached on Monday-Thursday from 7:30 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached at (571) 272-0646.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. This new location should be used in all instances when faxing any correspondence numbers to Group 1600. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more

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information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Shelley A. Dodson
Primary Examiner
Art Unit 1616

September 11, 2006